



May 31, 2018

The Honorable Ricardo Lara
State Capitol, Room 5050
Sacramento, CA 95814

RE: Senate Bill 1302 - OPPOSE

Dear Senator Lara,

On behalf of the below signed organizations, we regret to inform you of our continued opposition to your Senate Bill 1302, relating to the delivery of cannabis in local jurisdictions.

With the enactment of Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) there are a large number of licensed industry actors participating in the regulated commercial cannabis market. The ability of local jurisdictions to control and regulate business entities participating in their local area was central to the passage of both MAUCRSA and Proposition 64.

We believe that local control must be sustained in regulating licensed entities who want to participate in the local markets. If SB 1302 were to become law it would undo this very important aspect of the framework which was carefully crafted. SB 1302 prohibits a city or county from deciding whether to allow delivery of retail cannabis within its jurisdiction. Instead, SB 1302 would make the permissibility of delivery

transactions in one jurisdiction dependent upon licensing decisions (and regulatory oversight) in another jurisdiction. We believe that SB 1302 eliminates a city's and county's local control over whether and how to allow mobile deliveries, and would reduce oversight and accountability of a key industry participant – retailers and their delivery agents.

We are also concerned about the overall 'race to the bottom' effect if SB 1302 were to be enacted. In essence, jurisdictions with minimal local regulatory aspects and virtually non-existent local taxes will serve as the preferred retailer that will serve as the regional cannabis provider via mobile deliveries. This has the effect of one regional retailer having a competitive advantage over other retailers that are located in retail-authorizing jurisdictions and a near monopoly in jurisdictions that do not allow for mobile deliveries. We believe this establishes a dangerous business precedent for retail operators who purposely locate (or are courted) in jurisdictions that have minimal local controls.

SB 1302 is also likely unconstitutional. Article II, section 10(c) of the California Constitution permits the electorate through initiated legislation to restrain or condition the otherwise plenary power of the Legislature to enact statutes if the statutes amend initiated legislation. See *Amwest v. Wilson* (1995) 11 Cal.4th 1243. When, as is the case with Proposition 64, the electorate requires amendments, in the words of Section 10 of the Proposition, "to further the purposes and intent of the Act," it is established that the amendment must take the initiative's purposes and scheme as they are and advance those purposes; move in the same purposeful direction. See *Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354; *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal. App.4th 1473.

Critically, under these cases, courts will not defer to the Legislature's often self-serving declarations that an amendment furthers the purposes of an initiative. Courts, instead, conduct a searching inquiry and, as the above three cases underscore, are not at all reluctant to strike amendments that undermine enacted initiatives and, thus, threaten the electorate's power to initiate legislation.

Proposition 64's unambiguously included respect for the sovereignty of local governments as a part of its "comprehensive system" that the Legislature simply does not have the power to un-do:

SECTION 3. PURPOSE AND INTENT. The purpose of the Adult Use of Marijuana Act is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana....

(c) Allow local governments to enforce state laws and regulations for nonmedical marijuana businesses and enact additional local requirements for nonmedical marijuana businesses, but not require that they do so for a nonmedical marijuana business to be issued a state license and be legal under state law.

(d) Allow local governments to ban nonmedical marijuana businesses as set forth in this Act.

SB 1302 (Lara) frustrates these purposes. The bill would add 26200(h) to the Business & Professions Code and operatively reads: "*(h) A local jurisdiction shall not adopt or enforce any ordinance that would prohibit a licensee from delivering cannabis within or outside of the jurisdictional boundaries of that local jurisdiction.*"

What is the point of a jurisdiction being able to ban, for example, the retail sale of nonmedical marijuana if it cannot regulate marijuana delivered within its borders? There is none. We believe that SB 1302 is an amendment to Proposition 64 that seeks to over-ride the policy choices made by the electorate.

If you have any questions or concerns with these comments, please contact Paul A. Smith of RCRC at (916) 447-4806, Jolena Voorhis of UCC at (916) 327-7531, Cara Martinson of CSAC at (916) 327-7500, Jonathan Feldman of California Police Chiefs at (916) 822-8900, Marvin Pineda of UCBA at (916) 446-7843, Kathryn Scott on behalf of Verdant Distribution at (916) 930-0609, Melahat Rafiei of Santa Ana Cannabis Association at (323) 777-4565, and Charles Harvey of League of California Cities at (916) 658-8200.



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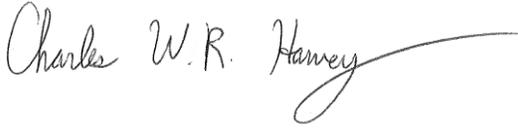
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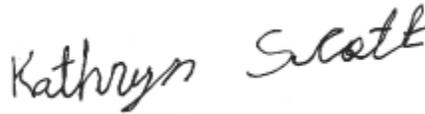
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